

STATE OF MICHIGAN
COURT OF APPEALS

46TH CIRCUIT TRIAL COURT,

Plaintiff/Counterdefendant/Third-
Party Defendant/Counterplaintiff-
Appellee,

v

CRAWFORD COUNTY and CRAWFORD
COUNTY BOARD OF COMMISSIONERS,

Defendants/Counterplaintiffs/Third-
Party Plaintiffs-Appellants,

and

KALKASKA COUNTY,

Intervening Third-Party
Plaintiff/Counterdefendant-
Appellant,

and

OTSEGO COUNTY,

Third-Party Defendant.

46TH CIRCUIT TRIAL COURT,

Plaintiff/Counterdefendant/Third-
Party Defendant/Counterplaintiff-
Appellee,

v

CRAWFORD COUNTY and CRAWFORD
COUNTY BOARD OF COMMISSIONERS,

FOR PUBLICATION
December 21, 2006
9:00 a.m.

No. 246823
Crawford Circuit Court
LC No. 02-005951-CZ

ON REMAND

No. 248593
Crawford Circuit Court
LC No. 02-005951-CZ

Defendants/Counterplaintiffs/Third-
Party Plaintiffs-Appellants,

ON REMAND

and

KALKASKA COUNTY,

Intervening Third-Party
Plaintiff/Counterdefendant-
Appellant,

and

OTSEGO COUNTY,

Third-Party Defendant.

46TH CIRCUIT TRIAL COURT,

Plaintiff/Counterdefendant/Third-
Party Defendant/Counterplaintiff-
Appellee,

v

CRAWFORD COUNTY and CRAWFORD
COUNTY BOARD OF COMMISSIONERS,

No. 251390
Crawford Circuit Court
LC No. 02-005951-CZ

Defendants/Counterplaintiffs/Third-
Party Plaintiffs-Appellants,

ON REMAND

and

KALKASKA COUNTY,

Intervening Third-Party
Plaintiff/Counterdefendant-
Appellant,

Official Reported Version

and

OTSEGO COUNTY,

Third-Party Defendant-Appellee.

Before: Sawyer, P.J., and Bandstra and Smolenski, JJ.

PER CURIAM.

We issued an opinion in this matter on April 1, 2004, *46th Circuit Trial Court v Crawford Co*, 261 Mich App 477; 682 NW2d 519 (2004) (*46th Circuit Court I*). An appeal of that case was held in abeyance by the Supreme Court pending its decision in a related matter that has now been decided, *46th Circuit Trial Court v Crawford Co*, 476 Mich 131; 719 NW2d 553 (2006) (*46th Circuit Court II*). In an order dated November 1, 2006, the Supreme Court vacated in part the judgment of this Court in *46th Circuit Court I* and remanded the matter "for reconsideration of whether the 46th Circuit Trial Court is entitled to recover reasonable attorneys fees, in light of this Court's decision in" *46th Circuit Trial Court II*. 477 Mich 920 (2006).

In *46th Circuit Court I, supra* at 490, we concluded that the inherent-power doctrine supplies a court with the authority to take whatever steps are reasonably necessary to fulfill the judicial function. Specifically, we concluded that this authority includes undertaking litigation to secure necessary funding, employing outside counsel to do that, and recovering reasonable attorney fees spent on that litigation. *Id.* at 490-491. "[T]he inherent power of a court includes those powers reasonably required for its practical exercise . . . [, including the power] to employ counsel and recover reasonable attorney fees arising out of such inherent power litigation." *Second Judicial Dist Court Employees & Judge v Hillsdale Co*, 423 Mich 705, 749; 378 NW2d 744 (1985) (Riley, J., dissenting). Nonetheless, we further reasoned that the determination of appropriate attorney fees in this context must be approached with "great caution," *46th Circuit Court I, supra* at 496, and we outlined a procedure to be used in determining the issue, *id.* at 499-500. We reversed the lower court orders awarding attorney fees and remanded for determination of those fees in light of our decision. *Id.* at 505.

We find nothing in *46th Circuit Court II* that would undermine this analysis or result. The Supreme Court reiterated our conclusion that the inherent-power doctrine provides the judiciary the authority to compel appropriations that are reasonable and necessary to allow the court to function serviceably in carrying out its constitutional responsibilities. *46th Circuit Court II, supra* at 143-149. The Supreme Court determined that, under the facts of this case, the 46th Circuit Trial Court had failed to prove with clear and convincing evidence that the appropriation made by the legislative bodies was insufficient in this regard. *Id.* at 149-155. However, nothing in the Supreme Court's opinion suggests that a court may recover attorney fees expended to assert a claim for increased funding only if that claim is ultimately adjudged to be meritorious.

In our view, such a rule would severely undermine the inherent-power doctrine. A rule allowing reimbursement of attorney fees only if inherent-power litigation is successful would have an onerous chilling effect. The judiciary, only contemplating litigation because of a perceived budget shortfall, would be hard-pressed to employ outside counsel whose

unreimbursed fees might exacerbate that shortfall.¹ As we have already noted, there is no reason in this case to conclude that the claim for additional funding was made in bad faith, and the claim was, at least, arguably meritorious. *46th Circuit Court I*, *supra* at 492 n 11.

Accordingly, on remand from the Supreme Court in Supreme Court Docket Nos. 126088, 126089, and 126090, we again conclude that the 46th Circuit Trial Court is entitled to recover reasonable attorney fees within the limitations set out in *46th Circuit Court I*. Further, on remand from the Supreme Court in Supreme Court Docket Nos. 126846, 126847, and 126848, 477 Mich 920 (2006), we have also reconsidered our July 7, 2004, order in light of this opinion, and we again affirm the June 11 and June 30, 2004, opinions and orders concerning attorney fees and costs entered by the lower court on remand from *46th Circuit Court I*.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Michael R. Smolenski

¹ We recognize that our decision is inconsistent with the usual rule that attorney fees are recoverable, if at all, only by a prevailing party. This case presents a unique circumstance, because the viability of one of our three branches of government is at issue. The judicial branch, which has no independent financial means to undertake litigation concerning funding, must be empowered to undertake that litigation when necessary to protect the judicial function.